

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 03-10038-01-JWB

EDUARDO GUTIERREZ-AGUINIGA,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on Defendant's motion for reconsideration (Doc. 268.) The motion is briefed and ripe for review (Docs. 268, 269.) For the reasons stated herein, Defendant's motion is DENIED.

Defendant previously filed a motion for sentence reduction to time served under 18 U.S.C. § 3582. (Doc. 264.) On September 22, 2021, the court denied Defendant's motion after finding he had failed to meet his burden of showing extraordinary and compelling reasons for a sentence reduction:

Considering Defendant's relatively young age, his state of health, and the medical care available to him at the facility where he is incarcerated, he appears to face the same sort of risks from COVID-19 as are faced by the public at large. In sum, the court concludes Defendant has failed to show there are extraordinary and compelling reasons to reduce his sentence.

(Doc. 267 at 6.)

On September 29, 2021, Defendant filed the present motion asking the court to review all of his medical records and conditions in reconsidering his motion for sentence reduction. (Doc. 268.) The government asserts that Defendant's motion falls "remarkably short of overcoming the

stringent rules governing motions for reconsideration, namely, that such motions cannot be used to relitigate” issues that could have been raised in his original motion. (Doc. 269 at 2.) The court agrees with the government.

“A motion to reconsider must be based on: (1) an intervening change in controlling law; (2) the availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice.” D. Kan. Rule 7.3(b); *see also Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (stating same three grounds for a Rule 59(e) motion to reconsider a non-dispositive order). A motion for reconsideration is not appropriate to repeat arguments or advance arguments that could have been raised previously. *Servants of Paraclete*, 204 F.3d at 1012.

Here, it is clear the Defendant is simply rehashing his previous arguments the court already considered in denying his sentence reduction. Defendant points to no change in the law or new evidence. Instead, Defendant seems to believe the court erred by not properly considering his medical records before denying his motion. However, this is not the case. The court clearly walked through Defendant’s alleged medical conditions of Graves Disease, hyperlipidemia, diabetes, and prostate issues. (Doc. 267 at 5-6.) Defendant offers nothing new for the court to consider. Accordingly, Defendant’s motion (Doc. 268) is DENIED.

IT IS SO ORDERED this 22nd day of November, 2021.

s/ John W. Broomes
JOHN W. BROOMES
UNITED STATES DISTRICT JUDGE